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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

15 CR 512 (HBP)

5 ALBERT HALLAC

6 Defendant.

7 -----x

8 New York, N.Y.

9 July 30, 2015

10:15 a.m.

10 Before:

11 HON. HENRY B. PITMAN,

12 Magistrate Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the  
Southern District of New York

16 ANDREW BAUER

BRIAN BLAIS

17 Assistant United States Attorneys

18 J. CHRISTOPHER ALBANESE

Attorney for Defendant

19  
20 Also present: S.A. Shannon Bieniek, FBI

F7U6HALP

1 (Case called)

2 THE COURT: Good morning. Please be seated.

3 THE DEPUTY CLERK: Counsel, state your name for the  
4 record.

5 MR. BLAIS: Andrew Bauer and Brian Blais for the  
6 government. We're joined at counsel table by FBI Agent Shannon  
7 Bieniek.

8 MR. ALBANESE: J. Christopher Albanese, attorney for  
9 the defendant Albert Hallac.

10 THE COURT: Good morning. This is an initial matter.  
11 Any attorney in the well of the court with a cell phone is  
12 directed to turn the cell phone off at this time so we give our  
13 undivided attention to the matter at hand.

14 I understand there is an application on behalf of  
15 Mr. Hallac.

16 MR. ALBANESE: Yes, your Honor.

17 THE COURT: And the applications are?

18 MR. ALBANESE: We have an application to seal the  
19 record, the docket, as well as the courtroom for this  
20 proceeding.

21 I have an affirmation in that regard that I take it  
22 the government has received?

23 MR. BAUER: We have, your Honor.

24 THE COURT: What is the government's position?

25 MR. BAUER: Your Honor, our position is different for

F7U6HALP

1 each of the requests. As it relates to today's proceedings,  
2 the government would consent or join in the application to seal  
3 today's proceeding as well as the transcript. There was  
4 another request to seal the entire docket to make it a United  
5 States v. John Doe entry. We take no position on that, your  
6 Honor. We certainly see some of the points that defense  
7 counsel has made. We're not opposing it today, but on the  
8 other hand we're not sure it is entirely necessary and we do  
9 oppose the request to seal the courtroom.

10 THE COURT: The opposition to sealing the courtroom,  
11 is that based on the DOJ policy or is there something unique  
12 about this case or is it something else?

13 MR. BAUER: It is based on the DOJ policy, your Honor.  
14 But as specific to this case, I don't think the facts as we  
15 know them or are articulated in defense counsel's submission  
16 rise to the level requiring the sealing of the courtroom.

17 THE COURT: What are your thoughts?

18 MR. ALBANESE: Your Honor, as the government notes and  
19 I believe will attest the potential future defendants in this  
20 matter are not only extremely litigious but they are  
21 potentially dangerous. There has been a history of violence.  
22 One of the potential defendants -- I don't know if you would  
23 like me to go into details with names, Drew. But as far as  
24 potential defendants go, there has been a potential history of  
25 organized crime ties. There has also been some rumors of other

F7U6HALP

1 witnesses that have met untimely demise at least in his  
2 father's case. So there is some concern from defense counsel  
3 on that issue.

4 THE COURT: I am going to grant defendant's  
5 application and seal the courtroom and the record.

6 Is there anyone in the gallery who is not either with  
7 the U.S. Attorney's Office or with the FBI?

8 PRETRIAL OFFICER: I am with pretrial, your Honor.

9 THE COURT: Let me rephrase the question. Anyone who  
10 is not with the U.S. Attorney's Office, federal law  
11 enforcement, pretrial, or other federal agency?

12 UNIDENTIFIED SPEAKER: Yes, your Honor. We're counsel  
13 for Weston Capitalized Management.

14 MR. ALBANESE: They are co-counsel, your Honor.

15 THE COURT: You're co-counsel?

16 MR. ALBANESE: Yes.

17 THE COURT: I take it there is no objection to their  
18 remaining.

19 MR. ALBANESE: I prefer if they did.

20 THE COURT: Is there anyone else who doesn't fit into  
21 those categories?

22 Let me ask the deputy at this time to lock the  
23 courtroom door.

24 MR. ALBANESE: Thank you, your Honor.

25 THE COURT: The first order of business will be for

F7U6HALP

1 Mr. Hallac to waive indictment and proceed by way of  
2 information; is that right?

3 MR. BAUER: That is correct, your Honor. The matter  
4 was wheeled out to Judge Berman. To be clear on the record,  
5 Judge Berman referred the case to your Honor for the guilty  
6 plea. This is our first --

7 THE COURT: Let me ask Mr. Cancellarich to conduct the  
8 waiver of indictment allocution.

9 THE DEPUTY CLERK: You are Albert Hallac?

10 THE DEFENDANT: Yes, I am.

11 THE DEPUTY CLERK: Have you signed the waiver of  
12 indictment?

13 THE DEFENDANT: Yes, I have.

14 THE DEPUTY CLERK: Before you signed it, did you  
15 discuss it with your attorney?

16 THE DEFENDANT: I certainly did.

17 THE DEPUTY CLERK: Did your attorney explain it to  
18 you?

19 THE DEFENDANT: Yes.

20 THE DEPUTY CLERK: Do you understand what you are  
21 doing?

22 THE DEFENDANT: Yes.

23 THE DEPUTY CLERK: Do you understand you are under no  
24 obligation to waive indictment?

25 THE DEFENDANT: Yes, sir.

F7U6HALP

1 THE DEPUTY CLERK: Do you understand if you do not  
2 waive indictment if the government wants to prosecute you, they  
3 will present this case to a grand jury, which may or may not  
4 indict you?

5 THE DEFENDANT: I understand.

6 THE DEPUTY CLERK: Do you understand by signing this  
7 waiver of indictment, you have given up your right to have this  
8 case presented to a grand jury?

9 THE DEFENDANT: I understand.

10 THE DEPUTY CLERK: Do you understand what a grand jury  
11 is?

12 THE DEFENDANT: Yes, sir.

13 THE DEPUTY CLERK: Have you seen a copy of the  
14 information?

15 THE DEFENDANT: Yes, sir.

16 THE DEPUTY CLERK: Do you waive its public reading?

17 THE DEFENDANT: Yes, sir.

18 THE DEPUTY CLERK: Thank you.

19 THE COURT: At this time let me also ask  
20 Mr. Cancellarich to place two documents before Mr. Hallac.

21 There a one-page document entitled Consent to Proceed  
22 before a United Magistrate Judge on a Felony Plea Allocution  
23 and a document in the form of a letter dated July 27, 2015.

24 Let me ask Mr. Cancellarich to mark the letter as  
25 Court Exhibit 1, please.

F7U6HALP

1           Mr. Hallac, two documents have been placed before you.  
2       I want to first discuss with you the one-page document entitled  
3       Consent to Proceed before a United States Magistrate Judge on a  
4       Felony Plea Allocution.

5           Do you see that one-page document?

6           THE DEFENDANT: Yes, your Honor.

7           THE COURT: Does your signature appear on the bottom  
8       of it?

9           THE DEFENDANT: Yes, your Honor.

10          THE COURT: Did you read it before you signed it?

11          THE DEFENDANT: Yes, I did.

12          THE COURT: Did you discuss it with your attorney  
13       before you signed it?

14          THE DEFENDANT: Yes, I did, your Honor.

15          THE COURT: Do you understand that you have the right  
16       to have your plea taken by a district court judge instead of a  
17       magistrate court judge?

18          THE DEFENDANT: Yes, your Honor.

19          THE COURT: Do you understand that by signing that  
20       piece of paper, you are giving up your right to have your plea  
21       taken by district court judge and consenting to have it taken  
22       by a magistrate judge? Do you understand that to be the effect  
23       of your signature on that piece of paper?

24          THE DEFENDANT: I understand, your Honor.

25          THE COURT: Has anyone made any promises to you or has

F7U6HALP

1 anyone made any threats to you or has anyone made any force  
2 against you to induce you to consent to proceed before a  
3 magistrate judge?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: There is a second document before you in  
6 letter in the form of a letter marked Court Exhibit 1. Do you  
7 see Court Exhibit 1?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Does your signature appear on the last  
10 page of Court Exhibit 1?

11 THE DEFENDANT: Yes, it does.

12 THE COURT: Did you read Court Exhibit 1 before you  
13 signed it?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Did you discuss it with your attorney  
16 before you signed it?

17 THE DEFENDANT: Yes, I did.

18 THE COURT: Thank you.

19 Please bring those documents back up, Mr.  
20 Cancellarich.

21 Please place Mr. Hallac under oath.

22 THE DEPUTY CLERK: Will you please state your name for  
23 the record.

24 THE DEFENDANT: Albert Hallac.

25 (Defendant sworn)



F7U6HALP

1 THE COURT: Mr. Hallac, you have now been placed under  
2 oath. If you make a false statement during these proceedings,  
3 you can be prosecuted for perjury. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: The law requires that I ask you a number  
6 of questions to ensure that your plea is knowing and voluntary  
7 in all respects.

8 You can be seated.

9 To ensure your plea is knowing and voluntary in all  
10 respects, to you ensure that you understand what you are doing  
11 today and the consequences of what you are doing. If you don't  
12 understand any question that I ask you, tell me that you don't  
13 understand the question and I will try to clarify the question  
14 or give you a chance to speak privately with your attorney so  
15 that you understand exactly what is being asked of you. In  
16 addition, if at any time during these proceedings you want to  
17 speak with your attorney for any reason whatsoever, just tell  
18 me that you want to speak with your attorney and I will give  
19 you the chance to speak with him privately.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Please state your full name.

23 THE DEFENDANT: Albert Hallac.

24 THE COURT: How old are you, sir?

25 THE DEFENDANT: 78.

F7U6HALP

1 THE COURT: How far did you get in school?

2 THE DEFENDANT: Bachelors degree.

3 THE COURT: Have you recently been treated for any  
4 type of mental illness?

5 THE DEFENDANT: Recently I was seeing a psychiatrist  
6 every six months or so.

7 THE COURT: For what condition do you see the  
8 psychiatrist?

9 THE DEFENDANT: Depression.

10 THE COURT: Do you take any medication for depression?

11 THE DEFENDANT: Yes, a medication called Cymbalta.

12 THE COURT: When was the last time you took Cymbalta?

13 THE DEFENDANT: Last night.

14 THE COURT: It is currently about 10:25 in the  
15 morning.

16 Is there anything about that medication that affects  
17 your ability to think or to understand?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: How frequently do you see the  
20 psychiatrist?

21 THE DEFENDANT: Every six months or so.

22 THE COURT: Am I correct in understanding that the  
23 depression is not acute? It's not profoundly serious?

24 THE DEFENDANT: No, it is not.

25 THE COURT: Have you recently been treated for drug

F7U6HALP

1 addiction of any kind?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Have you recently been treated for  
4 alcoholism?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Apart from this Cymbalta, have you taken  
7 any kind of drugs or medicine, legal or illegal, within the  
8 last two days?

9 THE DEFENDANT: I do take two medications twice a day  
10 for heart, for asthma, for rheumatoid arthritis and a bunch of  
11 other things. So I do take them at night and in the morning.

12 THE COURT: Is there anything about those medications  
13 that affects your ability to think or to understand?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Have you had any beer, wine or liquor in  
16 the last 24 hours?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Apart from the conditions you've already  
19 described are you seeing a doctor or health care provider for  
20 any other conditions?

21 THE DEFENDANT: I am seeing a health care provider in  
22 Florida for rheumatoid arthritis.

23 THE COURT: I think you mentioned asthma; right?

24 THE DEFENDANT: Yes. But that is -- I had a flareup  
25 in March, April or so.

F7U6HALP

1 THE COURT: You also mentioned a cardiac condition.

2 THE DEFENDANT: Yes. I have been very fine with that.  
3 I have been taking regular medication for blood pressure and  
4 for cholesterol.

5 THE COURT: I see. In general do you feel  
6 clear-headed today and able to understand what is going on  
7 around you?

8 THE DEFENDANT: I feel fine, your Honor.

9 THE COURT: Mr. Kaplan.

10 MR. ALBANESE: Mr. Albanese. I am standing in for  
11 Mr. Kaplan today.

12 THE COURT: Mr. Albanese, am I correct in my  
13 assumption that you have spoken to Mr. Albanese before today's  
14 proceeding?

15 MR. ALBANESE: Yes, your Honor.

16 THE COURT: Without telling me the content of anything  
17 you may have discussed with him, did anything happen during  
18 your conversations with Mr. Hallac where you have reservations  
19 about his ability to proceed today?

20 MR. ALBANESE: No, your Honor.

21 THE COURT: Is either side aware of any physical,  
22 psychological or emotional condition that might prevent  
23 Mr. Hallac from entering a guilty plea today?

24 MR. BAUER: No, your Honor.

25 THE COURT: Let me ask Mr. Cancellarich to mark a copy

F7U6HALP

1 of the information as Court Exhibit 1 and to also place that  
2 before Mr. Hallac.

3 Now, Mr. Hallac, a copy of the information against you  
4 has been placed before you and has been marked as Court Exhibit  
5 2. Did you receive a copy of that information prior to today?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Have you had a chance to read the  
8 indictment and to discuss it with your attorneys, Mr. Kaplan  
9 and other attorneys with his firm including Mr. Albanese?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Are you generally satisfied with the  
12 representation you received in this case and the advice your  
13 attorneys have given to you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Is it your intention here today to plead  
16 guilty to Counts One through Five of the information?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: I want to discuss with you briefly the  
19 nature of the charge against you in each of the counts of the  
20 information, the elements the government would have to prove at  
21 trial to establish your guilt, and the penalties you face if  
22 your plea is accepted.

23 Do you understand that Count One of the information  
24 charges you with conspiracy to commit the offenses of  
25 investment advisor fraud and securities fraud in violation of

F7U6HALP

1 Title 18, United States Code, Section 371? Do you understand  
2 that is the nature of the charge against you in Count One?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that in order to  
5 establish your guilt on Count One, the government would have to  
6 prove three elements beyond a reasonable doubt: First, that  
7 there was an agreement among two or more people to commit the  
8 offenses of investment advisor fraud and securities fraud;  
9 second, that you knowingly entered into and became part of that  
10 agreement with knowledge of its illegal object; and third, that  
11 at least one the overt acts alleged in the information was  
12 committed in furtherance of the agreement or conspiracy; do you  
13 understand those are the three elements the government would  
14 have to prove with respect to Count One?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you you understand on and Count One you  
17 face the maximum sentence of five years' imprisonment, a  
18 maximum term of supervised release of three years, a maximum  
19 fine of the greatest of \$250,000 or twice the gross pecuniary  
20 gain deprived from the offense, or twice the gross pecuniary  
21 loss to persons, other than yourself, plus a mandatory special  
22 assessment of \$100; do you understand those are the penalties  
23 you face on Count One?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that Count Two of the

F7U6HALP

1 information charges you with investment advisor fraud in  
2 violation of Title 15, United States Code, Section 80b-6 and  
3 80b-17? Do you understand that is the nature of the charge  
4 against you in Count Two?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that in order to  
7 establish your guilt on Count Two, the government would have to  
8 prove the following elements beyond a reasonable doubt: First,  
9 that you were and investment advisor; second, that you did one  
10 of the following: That you either employed a device, scheme or  
11 artifice to defraud an actual or prospective investor advisory  
12 client or engaged in a transaction, practice or course of  
13 business which operated as a fraud and deceit upon those  
14 investment advisor clients or prospective advisory clients or  
15 engaged in an act, practice and course of business that was  
16 fraudulent, deceptive and manipulative? The government would  
17 have to prove one of those three to satisfy the second element.  
18 The third element the government would have to prove is that  
19 you devised or participated in such alleged device, scheme or  
20 artifice to defraud or engaged in such alleged transaction,  
21 practice or course of business knowingly, willfully and with  
22 the intent to defraud; and fourth that you employed such  
23 device, scheme or artifice to defraud or engaged in such  
24 transaction, practice or course of business by use of the mails  
25 or instrumentality of interstate commerce.

F7U6HALP

1 Do you understand those are the elements the  
2 government would have to prove with respect to Count Two?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that if your plea to  
5 Count Two is accepted, you face a maximum sentence of five  
6 years' imprisonment, a maximum term of three years' supervised  
7 release, a maximum fine of the greatest \$10,000 or twice the  
8 gross pecuniary gain arrived from the offense or twice  
9 pecuniary loss to persons other than yourself, plus a mandatory  
10 special assessment of \$100; do you understand those are the  
11 penalties you face on Count Two?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that Count Three of the  
14 information charges you with the offense of securities fraud in  
15 violation of Title 15, United States Code, Section 78j(b),  
16 Section 78ff and 17, C.F.R., 240.10b-5 and Title 18, United  
17 States Code, Section 2? Do you understand that is the nature  
18 of the charge against you in Count Three, securities fraud?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that in order to  
21 establish your guilt on Count Three, the government would have  
22 to prove -- excuse me. In order to establish your guilt on  
23 Count Three, the government would have to prove the following  
24 elements beyond a reasonable doubt: First, the government  
25 would have to prove that in connection with the purchase or



F7U6HALP

1 sale of securities, you did any one or more of the following:  
2 Employed a device, scheme or artifice to defraud or made an  
3 untrue statement of material facts or omitted to state a  
4 material fact which made what was said under the circumstances  
5 misleading or engaged in an act, practice or course of business  
6 that operated or would operate as a fraud or deceit upon a  
7 purchaser or seller. The government would have to prove one of  
8 those three to establish the first element. The second element  
9 is that you acted willfully and knowingly and willfully knowing  
10 with the intent to defraud. And third that the government  
11 would have to prove that you knowingly used or caused to be  
12 used any means or instruments of transportation or  
13 communication in interstate commerce or the use of the mails in  
14 furtherance the fraudulent conduct.

15 Do you understand those are the elements that the  
16 government would have to prove to establish your guilt on Count  
17 Three?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that on Count Three you  
20 face a maximum sentence of 20 years' imprisonment, a maximum  
21 term of three years of supervised release, a maximum fine of  
22 the greatest of \$5 million or twice the gross pecuniary gain  
23 deprived from the offense or twice the gross pecuniary loss to  
24 persons other than yourself resulting from the offense, plus a  
25 mandatory special assessment of \$100; do you understand those

F7U6HALP

1 are the penalties you face on Count Three?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that Count Four charges  
4 you with conspiracy to commit the offense of wire fraud in  
5 violation of Title 18, United States Code, Section 1349? Do  
6 you understand that is the nature of the offense against you in  
7 Count Four?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that in order to  
10 establish your guilt on Count Four, the government would have  
11 to prove two elements beyond a reasonable doubt: First, that  
12 there was an agreement among two or more people to commit the  
13 offense of wire fraud; and second, that you knowingly entered  
14 into and became part of that agreement with knowledge of its  
15 illegal objects; do you understand that those are the elements  
16 the government would have to prove with respect to Count Four?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that on Count Four you  
19 face a maximum sentence of 20 years' imprisonment, a maximum  
20 term of supervised release of three years, a maximum fine of  
21 the greatest \$250,000 or twice the gross pecuniary gain derived  
22 from the offense, or twice the gross pecuniary loss to persons  
23 other than yourself plus a mandatory special assessment of  
24 \$100; do you understand those are the penalties you face on  
25 Count Four?

F7U6HALP

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Finally, do you understand that Count Five  
3 charges you with the substantive offense of wire fraud in  
4 violation of Title 18, United States Code, Section 1343; do you  
5 understand that is the nature of the charge against you in  
6 Count Five?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that in order to  
9 establish your guilt on Count Five, the government would have  
10 to prove the following elements beyond a reasonable doubt:  
11 First, that there was a scheme or artifice to defraud or to  
12 obtain money or property by materially false and fraudulent  
13 pretenses, representations, or promises as alleged in the  
14 information; second, that you knowingly and willfully  
15 participated in the scheme or artifice to defraud with  
16 knowledge of its fraudulent nature and with the specific intent  
17 to defraud; and third, that in the execution of the scheme, you  
18 either used or caused the use of the interstate wires as  
19 specified in the information; do you understand those are the  
20 elements that the government would have to prove to establish  
21 your guilt on Count Five, the wire fraud count?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that on Count Five you  
24 also face the maximum sentence of 20 years' imprisonment, a  
25 maximum term of supervised release of three years, a maximum

F7U6HALP

1 fine of the greatest of \$250,000 or twice the gross pecuniary  
2 gain derived from the offense or twice the gross pecuniary loss  
3 to persons other than yourself, plus a mandatory special  
4 assessment of \$100; do you understand those are the penalties  
5 you face on Count Five?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that in the aggregate  
8 you face a maximum term of imprisonment of 70 years; do you  
9 understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Mr. Hallac, do you also understand that as  
12 part of your sentence the Court must enter an order of  
13 restitution that you pay back to any victim any ill-gotten gain  
14 or expenses that the victims incurred as a result of your  
15 conduct; do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Mr. Hallac, the plea to a felony can also  
18 have immigration consequences for individuals who are not  
19 United States citizens. In light of that fact, let me ask you  
20 are you a U.S. citizen?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Mr. Hallac, do you understand that under  
23 the Sentencing Reform Act of 1984 the United States Sentencing  
24 Commission has issued advisory guidelines for judges to consult  
25 in imposing sentences in criminal cases; do you understand

F7U6HALP

1 that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you and your attorneys discussed how  
4 the guidelines might apply in your case?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that Judge Berman, the  
7 judge who is going to impose sentence here, will not be able to  
8 determine the appropriate guideline sentence for your case  
9 until a document called a presentence report has been prepared  
10 and until both you and the government have had the opportunity  
11 to review the report and make any challenges you have to the  
12 facts in the report and to the guideline range recommended by  
13 the Probation Department; do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that the guideline range  
16 found to apply in your case may turn out to be different from  
17 any range you discussed with your attorneys or any range you  
18 discussed with the government; do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that after your  
21 guideline range has been determined, the Court has the  
22 authority to depart from the guidelines and to impose a  
23 sentence that is even more severe or less severe than the  
24 sentence called for by the guidelines; do you understand that?

25 THE DEFENDANT: Yes, your Honor.

F7U6HALP

1 THE COURT: Do you understand that the form of early  
2 release known as parole no longer exists in the federal system  
3 and that if you are sentenced to a term of imprisonment, you  
4 will not be released on parole; do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that under some  
7 circumstances the government may have the right to appeal from  
8 any sentence that is imposed upon you and seek the imposition  
9 of a harsher sentence; do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: I want to discuss with you some of the  
12 rights you are giving up by pleading guilty. Do you understand  
13 that you have the right to plead not guilty to the charges  
14 against you and you have the right to persist in that plea at  
15 all stages of the proceedings against you; do you understand  
16 you have those rights?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that if you chose to  
19 plead not guilty, you have the right to the assistance of  
20 counsel at all stages of the proceedings against you and you  
21 have the right to have counsel appointed to you if you could  
22 not afford counsel; do you understand you have those rights?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that if you chose to  
25 plead not guilty, you have the right to a trial by jury? At

F7U6HALP

1 the trial, you would be presumed innocent and the government  
2 would have to prove your guilty beyond a reasonable doubt. At  
3 a trial you would have the right to the assistance of counsel,  
4 you have the right to have counsel appointed if you could not  
5 afford counsel, you would have the right to see and hear all  
6 the witnesses against you, and you would have the right to have  
7 those witnesses cross-examined or questioned in your own  
8 defense. At a trial you have the right to testify and the  
9 right to offer evidence in your defense. Conversely, you have  
10 the right to decline to testify or decline to offer evidence.  
11 And if you chose not to testify or chose not to offer evidence,  
12 those facts would not be used against you. Finally, at trial  
13 you will have the right to compulsory process or court orders  
14 to compel witnesses to come to court and give testimony in your  
15 behalf.

16 Do you understand you have all those rights if you  
17 chose to plead not guilty and go to trial?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that by entering a plea  
20 of guilty if the plea is accepted, there will be no trial and  
21 you will be giving up your right to a trial as well as all the  
22 other rights associated with the trial that I have just  
23 described to you; do you understand you are giving up all those  
24 rights?

25 THE DEFENDANT: Yes, your Honor.

F7U6HALP

1 THE COURT: Apart from the agreements that are set  
2 forth in Court Exhibit 1, which is the letter agreement you  
3 identified at the outset of these proceedings, has anyone made  
4 any other promises to you or has anyone made any threats to you  
5 or has anyone used any force against you to induce you to plead  
6 guilty?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Are you pleading guilty because you are in  
9 fact guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: At this time I am going to ask you to tell  
12 us what it is that you did that makes you guilty of the  
13 offenses charged in the information.

14 Let me ask counsel is it a prepared statement?

15 MR. ALBANESE: Yes, your Honor. We have a prepared  
16 statement. Would you mind if he sits.

17 THE COURT: He can sit. Let me ask you not to go too  
18 fast when you read.

19 MR. ALBANESE: Your Honor, would you like a copy?

20 THE DEFENDANT: Your Honor, the factual basis for my  
21 plea is as follows: During the time period specified in the  
22 information, I was the president of Weston Capital Asset  
23 Management. Weston was a registered investment advisor and had  
24 offices in New York, Connecticut and West Palm Beach, Florida.  
25 Weston managed over a dozen hedge funds for its investors.



F7U6HALP

1           From in or about 2009 through at least in or about  
2           late 2012, I, along with others, participated in a scheme to  
3           defraud Weston investors. Generally speaking:

4           I failed to disclose to my investors material  
5           information about financial transactions involving their  
6           moneys;

7           I failed to discuss close to investors the transfer of  
8           moneys from one investment fund to benefit the investors of  
9           another fund;

10          I, along with the others, retained certain investor  
11          funds that were improperly transferred to an account that I  
12          controlled; and

13          I agreed to make a false representation to assist a  
14          co-conspirator in an attempt to defraud another company.

15          Allow me to explain these acts more specifically.

16          In or about the fall of 2009, Fund.com, a public  
17          company, agreed to purchase a substantial ownership interest in  
18          Weston. I soon learned that Fund.com was controlled by Jason  
19          Galanis, an individual who was barred by the SEC from being an  
20          officer or director of a public company. While I disclosed the  
21          purchase of Weston by Fund.com to my investors, I did not  
22          disclose to the investors Galanis' control over, or involvement  
23          in, Fund.com.

24          Similarly, in or about early 2010, I agreed with  
25          Galanis to enter into a transaction between one of Weston's

F7U6HALP

1 hedge funds called the Wimbledon Financing Fund, and an entity  
2 controlled by Galanis called the Gerova Financial Corporation.  
3 As part of that transaction I had the Wimbledon Financing Fund  
4 exchange all of its assets, which at the time consisted of  
5 investments in other hedge funds, with Gerova for restricted  
6 shares of Gerova stock believed to be worth approximately \$85  
7 million. While the details of the transaction were fully  
8 disclosed to investors of the Wimbledon Financing Fund, I did  
9 not disclose Galanis' control over or involvement with Gerova.

10 In both instances I was concerned that Galanis'  
11 involvement in the deals, and the fact of his SEC bar, would  
12 upset my investors and cause them to oppose or aggressively  
13 question the deals. I intentionally withheld this information  
14 about Galanis from the investors and did not instruct anyone  
15 else at Weston to inform the investors of Galanis' involvement  
16 with either Fund.com or Gerova.

17 In early 2011, a series of negative articles appeared  
18 about Galanis, as well as other of his associates, and their  
19 involvement with Gerova. As a result, Gerova's stock plummeted  
20 and it was eventually delisted from the American Stock  
21 Exchange. The stock that the Wimbledon Financing Fund held in  
22 Gerova became worthless.

23 Around this time, Galanis introduced me to another  
24 individual named David Bergstein. Bergstein offered to help me  
25 recover, on behalf of the Wimbledon Financing Fund investors,

F7U6HALP

1 the assets that they had given to Gerova in exchange for the  
2 now worthless Gerova stock. However, Bergstein would only  
3 assist in this effort if the Wimbledon Financing Fund would  
4 contribute to the recovered assets to another company he  
5 created, called Arius Libra, in order to help finance  
6 investments in medical billing companies. Hoping to recover  
7 Wimbledon Financing Fund's assets from Gerova, I agreed to this  
8 transaction.

9 Part of the Gerova unwind transaction put together by  
10 Bergstein required paying off approximately \$5 million worth of  
11 Gerova's debts. Bergstein had assured me that the assets Arius  
12 Libra received from the financing fund, which had been  
13 recovered from Gerova, would be used to both obtain a loan to  
14 pay off the expenses of Gerova as well as provide operating  
15 capital for Arius Libra. Bergstein, however, failed to obtain  
16 the promised loan for Arius Libra and then convinced me to take  
17 cash held in another Weston fund called the Partners II fund,  
18 and loan that cash to Arius Libra. From in and or about  
19 August 2011 through December 2011, I caused Partners II to loan  
20 Arius Libra up to \$9 million. While the loans were  
21 collateralized with the Wimbledon Financing Fund assets in  
22 Arius Libra's possession, I did not inform the investors of  
23 Partners II that I had made this loan with their assets for the  
24 benefit of a separate group of Weston investors.

25 Excuse me.

F7U6HALP

(Pause)

In and around November 2011, Bergstein convinced me to enter into another transaction between a Weston fund called the Wimbledon TT Fund and an entity Bergstein controlled called Swartz IP. As part of this transaction, I agreed to invest the cash held by the TT Fund into Swartz IP. I did not conduct proper due diligence on Swartz IP nor did I inform the investors of the transaction. The total amount of money transferred to Swartz IP was approximately \$17 million. I, along with Bergstein and others, also arranged for three million of the TT Fund to be used to repay part of the loan Arius Libra owed to the P II fund. Again, this was not disclosed to the TT investors.

In each of the before-mentioned conduct, which I omitted material information, this made my representations incomplete and therefore misleading.

Many of the funds described above traded securities in the public exchanges.

In addition, Bergstein caused \$750,000 of the TT Fund money to be transferred to an entity called Purplebox. This entity was an investment vehicle created for the benefit of myself and two other executives of Weston. When I realized that the money Bergstein sent to Purplebox account belonged to the TT investors, I did not return the moneys to the TT Fund as I should have. By this time I had transferred 240,000 of the

F7U6HALP

1 750,000 out of the Purplebox account for my personal use.

2 In 2012, Bergstein requested I assist them in  
3 acquiring another company called Bidz.com. Bergstein asked me  
4 to falsely represent that Weston would be the guarantor of  
5 Bergstein's purchase on Bidz.com. Specifically, Bergstein  
6 falsely created and e-mailed me a financial statement for a  
7 Weston fund called Partners III that had no assets. Bergstein  
8 asked me to falsify -- falsely represent that this fund,  
9 Partners III, would back him as the guarantor for the  
10 acquisition. I knew the financial statement was false, but I  
11 forwarded the balance sheet to an attorney working on the  
12 transaction and represented the financial statement to be  
13 accurate.

14 When I communicated with investors, it was by  
15 telephone, e-mail, and regular mail and the investors were in  
16 many states. Many of the actions described to you today  
17 occurred while conducting business in the City of New York.

18 I stand before the Court today to plead guilty to the  
19 crimes I have just described. When I engaged in these acts, I  
20 knew they were wrong but did them anyway. Your Honor, I worked  
21 hard my whole life to build my business and provide for my  
22 family. I strove to live and conduct myself both personally  
23 and professionally, in a manner that I could be proud of: With  
24 honor, modesty, dignity and integrity. I recognize that the  
25 conduct that I have just described betrayed these aspirations.

F7U6HALP

1 Yet I take full responsibility for my actions and I will spend  
2 every day, for the rest of my life, living with the  
3 consequences of my actions and working to repair the damage I  
4 have caused to others, my family and myself.

5 THE COURT: Does the government believe any further  
6 inquiry is a necessary concerning the facts of the offenses?

7 MR. BAUER: Judge, just a couple technical matters  
8 relating to interstate commerce and venue. Mr. Hallac  
9 mentioned that he conducted business in the City of New York.  
10 I believe that is Manhattan, the Southern District of New York.  
11 If we can clarify that.

12 THE COURT: Mr. Hallac, on page 7 of your comments you  
13 referred to conducting business in the City of New York. Was  
14 that specifically Manhattan or the Bronx within the City of New  
15 York?

16 THE DEFENDANT: It was in Manhattan, yes, sir.

17 MR. BAUER: Then referring to the bottom of page 6  
18 where it was discussing that Mr. Hallac had sent the false  
19 financial statement regarding Bidz.com, I wanted to clarify  
20 that. I believe that was sent by e-mail electronic mail, and  
21 it was done so while Mr. Hallac was in Florida. He sent it to  
22 a recipient in California, but the e-mail server from which it  
23 was sent over was here in the Southern District of New York.

24 THE COURT: Is that correct?

25 THE DEFENDANT: Yes. Yes, your Honor, that is

F7U6HALP

1 correct.

2 MR. BAUER: Thank you, your Honor. No other  
3 questions.

4 THE COURT: Does the government represent that it has  
5 facts in its possession to prove Mr. Hallac's guilt beyond a  
6 reasonable doubt?

7 MR. BAUER: Yes, your Honor.

8 Mr. Hallac, how do you plead to each of the Counts One  
9 through Five to the information that has been placed before you  
10 and marked Court Exhibit 2, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: That is guilty to each count; is that  
13 correct?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Does the government believe any further  
16 inquiry should be made concerning any matter?

17 MR. BAUER: Well, your Honor, there is a forfeiture  
18 allegation in the information. I would ask that your Honor ask  
19 Mr. Hallac if he admits to that allegation.

20 MR. ALBANESE: Mr. Hallac, it is also my understanding  
21 that as part of your agreement with the government, you're  
22 agreeing to forfeit or give over to the government any  
23 ill-gotten gain that you have received as a result of the  
24 conduct you just described or anything that you purchased with  
25 the ill-gotten gain that resulted from the conduct; is that

F7U6HALP

1 correct?

2 THE DEFENDANT: That's correct, your Honor.

3 THE COURT: Anything else from the government?

4 MR. BAUER: No, your Honor. Thank you.

5 THE COURT: Mr. Albanese, do you believe any further  
6 inquiry should be made concerning any subject?

7 MR. ALBANESE: No, your Honor.

8 THE COURT: You can be seated, gentleman.

9 Based on Mr. Hallac's physical appearance, his  
10 demeanor and his answers to all the forgoing questions, I find  
11 that he is fully competent and capable of entering an informed  
12 and voluntary plea, that he is aware of the nature of the  
13 charges and the consequences of the plea, and that the plea is  
14 knowing and voluntary and supported by an independent basis in  
15 fact as to each of the essential elements of the offenses. I  
16 therefore accept the plea and recommend that Judge Berman  
17 accept the plea.

18 I take it a presentence report should not be ordered  
19 at this time nor should a sentencing date be set?

20 MR. BAUER: No, your Honor. If you would like if you  
21 want to set a control date, I would ask for six months out. I  
22 would also be just as comfortable to represent to your Honor  
23 that we'll be in touch with Judge Berman's chambers and set a  
24 control date with them.

25 THE COURT: I think it is better to do that directly



F7U6HALP

1 with Judge Berman's chambers.

2 MR. BAUER: Thank you, your Honor.

3 THE COURT: My understanding is that this is  
4 Mr. Hallac's initial appearance; is that correct?

5 MR. ALBANESE: That is correct, your Honor.

6 THE COURT: So bail also needs to be set?

7 MR. BAUER: That's correct, your Honor.

8 THE COURT: Do you have the pretrial services report?

9 MR. BAUER: We do, your Honor.

10 THE COURT: What are the parties' view on bail?

11 MR. BAUER: Your Honor, I think the parties have come  
12 to an agreement to a package that hopefully your Honor deems  
13 appropriate. It is a 500,000-dollar personal recognizance bond  
14 secured by the signature of Mr. Hallac. And then besides that  
15 it is all of the usual terms, including travel restricted to  
16 the continental United States. He has a United States  
17 passport, your Honor. What the parties have discussed is that  
18 we would like him to turn that passport over to Pretrial, but  
19 somewhere close to where he lives in Florida so that it could  
20 be accessed if necessary. I know that Mr. Hallac in particular  
21 has an interest in visiting family in Canada in the next month  
22 or two. The government is not opposed to it, but the  
23 government would ask that Mr. Hallac just make that application  
24 through Pretrial to Judge Berman.

25 THE COURT: Do we know what district he resides in in

F7U6HALP

1 Florida?

2 MR. BAUER: Southern District of Florida.

3 THE COURT: Passport to be surrendered to the Southern  
4 District of Florida.

5 MR. BAUER: And then no new travel applications be  
6 made.

7 I also saw in the Pretrial Services' report that  
8 Pretrial recommended continued mental health treatment. That  
9 seems to make sense. Mr. Hallac said to you, your Honor, he  
10 sees a psychiatrist every six months. That seems like that  
11 should continue. In terms of reporting to Pretrial Services, I  
12 am happy to go along with Pretrial's recommendation that he  
13 report by the web or telephone as directed.

14 THE COURT: Mr. Albanese, what are your thoughts? Is  
15 that the package that the parties have agreed?

16 MR. ALBANESE: Yes, your Honor.

17 THE COURT: I am going to set the bail as suggested by  
18 the government, a 500,000 PRB, travel limited to the  
19 continental United States, passport surrendered to Pretrial in  
20 the Southern District of Florida, no new applications for  
21 travel documents, continued mental health treatment, and  
22 regular Pretrial supervision by reporting by web or telephone.

23 MR. ALBANESE: Your Honor, I have one minor point. At  
24 present Mr. Hallac is with his wife and family on vacation in  
25 Vermont so he will not be back in the Southern District of

F7U6HALP

1 Florida until the end of August.

2 THE COURT: So the bond set today and the other  
3 conditions met by August 31?

4 MR. BAUER: I am pausing on the passport.

5 THE COURT: Where is the passport right now?

6 MR. ALBANESE: In my pocket right now.

7 THE COURT: You want it surrendered in Florida?

8  
9 PRETRIAL OFFICER: Your Honor, we can take possession  
10 of the passport. We'll send it to the Pretrial office in the  
11 Southern District of Florida.

12 THE COURT: Does that work for everybody?

13 MR. ALBANESE: Thank you.

14 THE COURT: He doesn't need the passport between now  
15 and the end of August, does he?

16 THE DEFENDANT: No.

17 MR. ALBANESE: Definitely not.

18 THE COURT: So the bond and passport will be  
19 surrendered today and the other conditions met by the end of  
20 August.

21 MR. ALBANESE: Thank you, your Honor.

22 THE COURT: Anything else from either side,  
23 government?

24 MR. BAUER: No, Judge. Just to clarify what we  
25 started to say, which was the sealing request, that the

F7U6HALP

1 courtroom has been closed today. I do think that it is your  
2 Honor's order that the docket will be United States v. John Doe  
3 docket.

4 THE COURT: No docket entries. Everything is held by  
5 Judge Berman until it is unsealed.

6 Anything else from the government?

7 MR. BAUER: No, your Honor. Thank you for your time.

8 THE COURT: Mr. Albanese, anything else?

9 MR. ALBANESE: No, your Honor. Thank you very.

10 THE COURT: Thank you all.

11 o0o

12  
13 I hereby certify that the foregoing is a true and  
14 accurate transcript, to the best of my skill and ability, from  
15 my stenographic notes.

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17  
18   
19 \_\_\_\_\_  
20 Official Court Reporter  
21 U.S. District Court  
22  
23  
24  
25